


Doc Code: AP-PTO-REQ

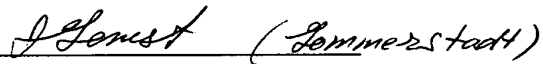
PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) D0188.70135US00	
	Application Number 10/086,286-Conf. #3327	Filed March 1, 2002	
	First Named Inventor Robert D. Torgerson et al.		
	Art Unit 3734	Examiner V. Q. Bui	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 55,151</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p>Signature:  Signature Roque El-Hayek Typed or printed name (617) 646-8000 Telephone number July 30, 2007 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of 1 forms are submitted.</p>			

<p align="center">Certificate of Mailing Under 37 CFR 1.8(a)</p> <p>I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p> <p>Dated: July 30, 2007</p> <p>Signature:  (Lemmestadt)</p>	
--	--



ARGUMENT FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

1. Lack of reasonable expectation of success

One of ordinary skill in the art would not have a reasonable expectation of success in using the collagen taught by Cruz to obtain the instantly claimed hemostatic collagen fabric because the collagen taught by Cruz is at least partially cross-linked. Cross-linking of collagen reduces its suspendability in water. See Amendment filed on November 3, 2006 at page 5 and Declaration by Dr. Surendra Batra dated November 2, 2006.

2. The additional teachings of the secondary reference (Mechanic) do not cure the deficiencies of the primary reference (Cruz)

The additional teachings of Mechanic do not cure the deficiencies of the primary reference of Cruz namely, suspending collagen in water. Mechanic does not teach suspending collagen in water as instantly claimed. See Amendments filed on May 17, 2004 at pages 4-9; February 17, 2005 at pages 4-9; May 26, 2005 at pages 4-7; October 24, 2005 at pages 4-5; and November 3, 2006 at pages 5-8.

3. Mechanic teaches away from suspending collagen in water

Mechanic's patents file histories indicate the importance of placing collagen in a buffered medium because a below neutral pH jeopardizes the integrity of the collagen fibrils. See Amendments filed on May 17, 2004 at pages 4-9 and February 17, 2005 at pages 4-9.

A suspension of collagen in water has an acidic pH which is contrary to the teachings of the Mechanic patents. See Amendment filed on November 3, 2006 at pages 6-8, and copy of Stephen Eldridge Declaration submitted with Applicant's response filed on May 17, 2005.